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OFFICE OF PETITIONS

In re Application of :
Benjamin La Borde :
Application No. 10/036,893 : DECISION ON PETITION
Filed: 4 January, 2002 :
Atty Docket No. 101324.0001US1 :

This is a decision on the petition under 1.137(b),¹ filed on 28 February, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 27 November, 2003, for failure to file a proper reply to the final Office action mailed on 26 August, 2003, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. On 10 November, 2003, petitioner filed a reply which was found not to *prima facie* place the case in condition for allowance. An Advisory Action was mailed on 20

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114.

In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

January, 2004. Notice of Abandonment was mailed on 1 April, 2004.

Petitioner requests that the application be revived for copendency with a concurrently-filed continuation-in-part (CIP) application. A review of Office PALM records reveals that CIP application No. 11/065,784 was filed on 25 February, 2005.

Since this application is revived for purposes of continuity only with continuing Application No. 11/065,784, filed on 25 February, 2005, and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the above-referenced application.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition fee of \$750.00 will be charged to counsel's deposit account, No. 50-2191, as authorized in the present petition.

Receipt of the power of attorney and change of correspondence address filed on 28 February, 2005, is acknowledged.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).